HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 35 OF 2004

Shekhar Chandra Pandey,
S/o Devi Dutt Pandey,
Presently posted as Junior Clerk,
Inter College, Vijaypur, Kanda,
District-Bageshwar. .....Petitioner.

Vs.

1. State of Uttaranchal, through the Joint Director of Education, Kumaon Mandal, Nainital.
2. The District Inspector of Schools, Bageshwar.
3. The Committee of Management, Inter College, Vijaypur, Kanda, District-Bageshwar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi counsel for the petitioner and Sri J.C. Pandey and Standing counsel for the respondents.

By the present writ petition, the petitioner has sought following relief:

> *"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 3.1.2004, passed by the respondent no. 2, (annexure No. 14 to this writ petition).*
>
> *II. Issue a writ, order or direction in the nature of mandamus directing the respondents to release the salary of the petitioner with interest, and treat him as a regular employee.*
>
> *III. Issue a writ, order or direction in the nature of mandamus directing the respondents not*

to interfere in the peaceful work of the petitioner on the post of Junior Clerk, in Inter College Vijaypur, Kanda, District-Bageshwar.

IV. *Issue any other order or direction, which this Hon'ble Court may deem, fit and proper in the circumstances of the case.*

V. *Award the cost of petition.*"

3. Briefly stated, petitioner was posted as Junior Clerk in the Inter College, Vijaypur, Kanda, District Bageshwar, which is a government-aided College.

4. On 24.010.1996, the Director of Education sanctioned 28 posts of Clerks in the various Inter Colleges and out of which one post of junior clerk and one post was of Senior Clerk were sanctioned for Inter College, Vijaipur, Kanda.

5. On 08.08.1997, the Committee of Management requested the District Inspector of Schools of permit to fill up one post of Junior Clerk in the pay scale of Rs. 950 – 1500 and one Class-IV post. Pursuant to the aforesaid letter, the District Inspector of Schools Almora vide his letter dated 14.08.1997 gave permission for filling up the post of Junior Clerk in the pay scale of Rs. 950-1500. The School Management after completing the necessary formalities, sent the documents to the office of the District Inspector of Schools for formal approval.

6. The Committee of Management Vijaypur, Kanda, District Bageshwar after getting the approval advertised the vacancy in local newspaper Swadhin Praja for the post of Junior Clerk and

Class IV post. The minimum qualification for the post of Clerk was Inter-mediate along with experience of typing.

7. In pursuance of the aforesaid advertisement, six candidates applied for the post of Junior Clerk and the interview in the respect held on 20.09.1997 and the result was declared on the same day. In the result, the petitioner was shown successful.

8. Committee of Management gave appointment to the petitioner on one-year probation period. Relevant portion of the appointment letter of the petitioner shows as under:

> ** egksn;]
>
> vkids izkFkZuk i= ds vk/kkj ij vkidks bl laLFkk ds izLrko la0 02 fnu0 21-9-97 ds vk/kkj ij ,d o"kZ ds ifjoh{k.k dky esa fu;qfDr nh tkrh gSA ft0fo0 fujh{kd vYeksM+k ls vuqeksnu izkIr gksus ij vkidks foHkkxh; osrueku ns; gksxkA
>
> vr% vki fu;qfDr i= ds izkIr ,d lIrkg ds vUrxZr fo|ky; esa izk/kkukpk;Z ls dk;ZHkkj xzg.k djkuk lqfuf’pr djsaA
>
> izcU/kd
>
> bUVjdkyst fot;iqj
> dkMk& vYeksM+kA
>
> izfrfyfi%& iz/kkukpk;Z b0dk0fot;iqj ¼dkMk½ dks bl vk’k; ls fd os Jh 'ks[kj pUnz ik.Ms dks l0fy0 in dk dk;ZHkkj fo|ky; fgr esa xzg.k djkuk lqfuf’pr djsA
>
> izcU/kd
>
> bUVjdkyst fot;iqj
> dkMk& vYeksM+kA

9. Thereafter, the Committee of Management sent the name of the petitioner before the District Inspector of Schools on 27.09.1997 for approval. In compliance of the appointment letter dated 27.09.1997 the petitioner joined the services as a Junior Clerk in the College on 30.09.1997. In respect of the work done by the petitioner, Principal of the aforesaid College gave an experience certificate to the petitioner on 28.10.2003.

10. Petitioner was working since the date of his joining but he was not being given salary due to non-approval of the financial sanction from the District Inspector of Schools.

11. Regarding this grievance, wife of the petitioner made a representation before the Secretary, Human Resource and Development, Govt. of India, and in reply of her representation dated 23.06.2000 made before the Secretary Human Resource and Development Ministry, Govt. of India, the District Inspector of Schools, Bageshwar sent a letter to the Committee of Management of the Inter College, Vijaypur, District-Bageshwar and required the detailed information about the appointment of the petitioner.

12. Thereafter, the District Inspector of Schools, Bageshwar appointed one Sri Vinay Joshi on the post of Junior Clerk under Dying in Harness Rules. In reply of the aforesaid, Principal of the aforesaid college informed the District Inspector of Schools that the petitioner is working in that institution since 1997 regularly on the post of Junior Clerk and his appointment was made with the prior permission of the District Inspector of Schools, but the approval of the appointment of the petitioner has not yet been received from the office of the District Inspector of Schools.

13. Regarding his grievances, the petitioner has made several representations on 09.09.2001 and 10.05.2002 requesting to release the salary and regularization, but the same have not yet been considered.

14. When nothing was done, the petitioner moved a Writ Petition No. 1342 of 2003 before this Court seeking a writ of mandamus directing the respondents to release his salary regularly and to treat him as a regular employee. Relevant portion of the order is quoted below:

> *"The grievance of the petitioner is that he is working sincerely since 1997, but not salary is being paid to him. The petitioner has stated that he has made representations before the respondents on 9.9.2001 and 10.5.2002 for payment of his salary but the respondents have not decided the representations.*
>
> *In view of the facts and circumstances of the case the respondents are directed to consider the representations of the petitioner in accordance with law after affording opportunity to the petitioner within three weeks after receipt of the certified copy of this order. The respondents are also directed to pay the salary to the petitioner provided he is working on the post of Junior Clerk.*
>
> *Subject to the aforesaid directions the writ petition is disposed of. No order as to costs."*

Petitioner has submitted that after obtaining the certified copy of the aforesaid order, he made a representation to the District Inspector of Schools. In pursuance of the order dated 12.11.2003, the District Inspector of Schools called the

petitioner to appear before him on 03.01.2004 along with detailed representation.

The District Inspector of Schools vide his order dated 03.01.2004 rejected the claim of the petitioner stating therein as under:

> "Jh 'ks[kj pUnz ik.Ms iq= Jh nsohnRr xzke ukjk;.k izks0 dk.Mk ftyk& ckxs'oj }kjk fnukad 03-12004 dks izkIr izR;kosnu ij fopkj djus ds mijkUr ;g fu.kZ; fy;k x;k fd izcU/kd b0dk0 fot;iqj dk.Mk }kjk fo|ky; esa lgk;d fyfid ds ,d fjDr in dks Hkjus gsrq vius dk;kZy; i=kad 1648@97&98 fnukad 08-08-97 }kjk ftyk fo|ky; fujh{kd vYeksM+k ls fuosnu fd;k x;k Qyr% ftyk fo|ky; fujh{kd vYeksM+k us vius dk;kZy; i=kad 1113@ek0@97&98 fnukad 14-08-97 ds }kjk vuqefr bl vk'k; ls nh x;h fd fjDr inksa dks Hkjrs le; vkj{k.k dksVs dk fu;ekuqlkj /;ku j[ksaA ysfdu izcU/kd }kjk vkj{k.k fu;eksa dk ikyu u djus dh fLFkfr esa ftyk fo|ky; fujh{kd vYeksM+k }kjk lgk0 fyfid ds fjDr in dks Hkjus dh iwoZ esa nh x;h vuqefr dks vius i=kad 15999@ek0@97&98 fnukad 05-11- 97 }kjk fujLr dj fn;k x;kA ifj.kkeLo:i izcU/kd b0 dk0 fot;iqj dk.Mk }kjk Jh ik.Ms dks lgk0 fyfid ij fu;qfDr fd;s tkus fu;qfDr i= fuxZr fd;k tkuk voS/kkfud ,oa vrkfdZd gS rFkk esjs }kjk fnukad 29-8-2002 dks b0dk0 fot;iqj dk.Mk dk vkdfLed fujh{k.k fd;k x;kA fujh{k.k ds nkSjk mifLFkr iaftdk dk voyksdu djus ij Jh 'ks[kj pUnz ik.Ms dk uke mifLFkfr iaftdk esa ntZ@vafdr ugha FkkA bl izdkj iz/kkukpk;Z @ izcU/kd oknh dk ;g dFku fd ;g fo|ky; esa fu;fer :i ls dk;Zjr gSA fujk/kkj gS vkSj vekU; gSA
>
> vr% oknh Jh 'ks[kj pUnz ik.Ms }kjk iznRr izR;kosnu fujLr fd;k tkrk gSA"

The grievance of the petitioner is that he has been appointed in pursuance of the appointment letter dated 14.8.97 and thereafter the recommendation letter was sent for approval as directed by the District Inspector of Schools on 27.09.1997, but the District Inspector of Schools has neither refused the recommendation nor sanctioned the pay to the petitioner and has rejected his claim only on the basis that at the time of appointment reservation quota has not been taken into consideration.

This Court vide order dated 12.11.2003 has directed the respondents to pay salary to the petitioner, if he is working on the post of Clerk. The petitioner has filed extract of Attendance Register, in which the Manager of the College has made endorsement that the petitioner has been working as Junior Clerk since 30.9.1997 vide letter No. 1112/Ma/97-98 dated 14.8.97 of District Inspector of Schools, Almora. No doubt the School is a private school under the Management and all affairs of the college are being looked after by the management committee. The Management has given certificate that the petitioner has been working in the college as Clark and thus the District Inspector of School has no authority to deny this certificate of the Manager of the College. Thus the petitioner is entitled to get the salary for the period he worked in the college as clerk.

Hon'ble Mr. Justice P.C. Verma has passed the following order in writ petition no. 35 of 2004 on 25.6.2004:

This application has been filed by Mr. K.N. Joshi, learned counsel for the petitioner praying for directing the respondents to pay the salary of the petitioner regularly.

Heard learned counsel for the parties and perused the record.

Petitioner was appointed in the year 1997 by the Committee of Management and he is continuously working on the post of Junior Clerk.

Therefore, the committee of Management is directed to pay the salary to the petitioner and if any approval is required from the DIOS, the same shall be given and the petitioner shall be paid salary.

Application is disposed of accordingly."

So far as the sanction of the appointment by the D.I.O.S. is concerned, the sanction for appointment on the post of junior clerk and a class IV was accorded vide letter-dated 1112/Ma/97-98 dated 14.8.97, however, there is no mention that the post of junior clerk is reserved for a particular caste or class. In the absence of allotment of the post to a particular class in the sanctioning letter, if the Management has made recruitment of the petitioner on the post of junior clerk, and he has been working continuously on that post for a considerably long period, the District Inspector of School is not justified to deny the grant financial sanction for making payment of salary to the petitioner.

In view of above, a writ of certiorari is issued quashing the order dated 31.2004 passed by the respondent no. 2. Further a writ of mandamus is issued directing the respondents to pay salary to the petitioner for the post of junior clerk where he is already working.

Accordingly, writ petition is allowed. No order as to costs.

Dated: February 12, 2007 **Rajesh Tandon, J.**

*Dhyani